

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**MELODY FARMS, L.L.C., a wholly owned
subsidiary of DEANS FOODS, INC.¹**

Employer

and

Case 7-RC-22959

**MICHIGAN COUNCIL 25, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO**

Petitioner AFSCME

and

Case 7-RC-22966²

**LOCAL 337, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Petitioner Teamsters

APPEARANCES:

Henry W. Sledz, Jr., Attorney, of Chicago, Illinois, for the Employer.

Robert Fetter and Richard Mack, Jr., Attorneys, of Detroit, Michigan, for
Petitioner AFSCME.

Gerry M. Miller, Attorney, of Milwaukee, Wisconsin, for Petitioner Teamsters.

¹ The name of the Employer appears as amended at the hearing.

² Subsequent to the filing of the petition in Case 7-RC-22959 by AFSCME, the Teamsters filed the petition in Case 7-RC-22966. As both petitioners seek to represent the same warehouse employees of the Employer, the undersigned issued an Order Consolidating Cases and Notice of Representation Hearing on March 14, 2006.

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Overview

The petitioners seek to represent a unit of approximately 34 full-time and regular part-time warehouse employees, including order selectors, checkers, switchers, receivers, lead men, and lead order selectors employed by the Employer at its facility located on Maple Street, Detroit, Michigan; but excluding production employees, maintenance employees, office clerical employees, drivers, managers, and guards and supervisors, as defined in the Act. The Employer contends that 22 full-time and regular part-time production employees in an adjacent building, including lead lab technicians, lab technicians, lead palletizers, palletizers, environmental workers, filler operators, freezer operators, mix persons, production swing workers,

³ The Employer, AFSCME, and Teamsters filed briefs, which were carefully considered. On April 12, 2006, AFSCME filed a motion to reopen the record to submit pictures of signs on the Employer's warehouse building. This motion was made pursuant to Section 102.65(e)(1) of the Board Rules and Regulations that states, in part, that "[o]nly newly discovered evidence . . . or evidence which the Regional Director or Board believes should have been taken at hearing will be taken at any further hearing." While AFSCME states that these pictures it wishes to submit were unavailable prior to hearing, I do not find an adequate basis for this assertion and deny its motion to reopen the record.

production receivers, and production CIP cleaners, should also be included in the unit because they share a community of interest with the petitioned-for unit.

The parties have stipulated that there has been no prior collective bargaining history involving the warehouse and production employees employed at this facility. However, about 35 drivers at the facility are separately represented in a unit by the Teamsters and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, and 8 maintenance employees at the facility are represented in still another unit by Operating Engineers Local 547. No party contends that employees already represented by a labor organization should be included in the petitioned-for unit.

I find that the production employees do not share a community of interest with the warehouse employees sufficient to require their inclusion in the unit over the objections of the petitioners.

Business Operations

The Employer processes and distributes milk, ice cream, and other dairy products to retail businesses. The facility on Maple Street in Detroit, Michigan processes and distributes only ice cream. On the property are three buildings: a production building, a warehouse, and the third building that is vacant. The production and warehouse buildings are positioned about 50 yards apart. In between the buildings is a parking lot, which is used by the employees. On the opposite side of the lot from its entrance is an above-ground tunnel, which is 14 to 16 feet wide and has a 20 foot ceiling, that connects the two buildings.

The production building has about 64,000 square feet of space and is kept at a normal temperature. It has areas for cold storage and dry storage of cream, ingredients, and packaging materials. The production building has four loading docks, through which most of the ingredients for the production process are unloaded and stored by production employees. There are five production lines, but only two are operated at a time.

The warehouse has about 60,000 square feet of space. The temperature is kept at 20 degrees below zero. There are 3,500 pallet positions in 31 aisles for the storage of inventory and materials, but currently only about 66 percent of the space is being used. Between 24 and 40 pallet positions in 1 aisle are used for frozen fruit and other flavorings used in the ice cream production

process. Pallet positions in four aisles store ice cream made in the production building, while ice cream from other manufacturers is delivered and fills the remainder of the pallet positions in use. The warehouse has its own 40 by 90 foot loading dock area outside the freezer for the delivery and transport of ice cream products and frozen ingredients.

Both buildings have their own office space, lunchrooms, vending machines, bathrooms, bulletin boards, and time clocks. The exterior doors to the buildings are locked and the locks to the different buildings are set with different entry codes, which are given to employees assigned to that particular building.

Supervision

The Employer's general manager at the Detroit facility is Jerry Shannon. Under Shannon are Plant Manager Gary Popovitch and Distribution Manager Tom Austin. Popovitch, who has been in his current position since only December 2005, has authority over both production and warehouse operations. Under Popovitch are Procurement Manager Kahle Strickland, Production Superintendent Gary Stemple, and Warehouse Manager Roy Konieczny. Strickland is in charge of purchasing and inventory control, and also handles safety issues, safety training, and identifies areas that need to be cleaned in both buildings. Stemple is in charge of planning production and the operations on the plant floor. Stemple has the authority to hire, fire, discipline, assign work, approve absences, and effectively recommend raises. There is nothing in the record as to Konieczny's authority to hire or fire in the warehouse, but he and Stemple have positions at the same level of company management.

Under Stemple is Plant Supervisor Milton Bender, who directs the employees on the production floor and is not now involved in the hiring process. Bender has authority to discipline, but any suspensions or discharges need to come to the plant manager and would need to be discussed beforehand with the director of human resources. Warehouse Supervisors Bob Espiscito, Stan Blair, and Dave Jeffries report to Warehouse Manager Konieczny. In the past, Espiscito has conducted an interview for a job applicant and future warehouse employee. Jeffries has disciplined several of the warehouse employees. While supposedly a supervisor can discipline employees of other departments if an infraction is performed in front of him, neither the plant manager nor a warehouse employee know of this ever happening and the Employer's records show that no employee was disciplined by a supervisor of another department in the 12 months preceding the hearing.

Production Superintendent Stemple does the scheduling for production employees, while Warehouse Manager Konieczny does the scheduling for warehouse employees. Supervisors in each department assign overtime to their own employees. Stemple has been doing job evaluations of production employees, while in the warehouse, supervisors Espiscito and Jeffries have been performing this task. Favorable performance appraisals are tied to wage increases.

Popovitch, Strickland, Stemple, Bender have offices in the production building. The offices for Konieczny, Espiscito, Blair, and Jeffries are in the warehouse building. Distribution operates out of the warehouse building, where Distribution Manager Austin and his subordinate supervisors, Tom West, Russ Ahrens, and Greg McCaleb, have offices. All of the managers and supervisors that oversee production work days. In the warehouse, Espiscito works days and the other two supervisors work evenings.

Terri Moore is the director of human resources and has responsibilities for this facility and several others. Her office is in Livonia, Michigan, at a Country Fresh facility, another subsidiary of the Employer's parent company, Deans Foods.

Employee Classifications Within the Production Department

There are 22 employees currently working in the production department. There is one receiver and one receiver/palletizer. Receivers unload trucks arriving at the production building using forklifts, palletizers, or hand jacks, and are responsible for documenting the items being unloaded. While production receivers also supposedly go into the warehouse to unload frozen ingredients delivered at the warehouse dock and place them in the pallet positions reserved for the ingredients, two afternoon warehouse employees, including one who has worked in the warehouse since it was purchased in 1999, have never seen this happen. Rather, they stated that they and other warehouse employees have unloaded these ingredients. Receivers also move needed ingredients in the production room, and may go to the warehouse to retrieve frozen ingredients.

In addition to the receivers, there is one lead palletizer, three palletizers, and the one receiver/palletizer, who has been already mentioned. Palletizers remove the packages of ice cream off conveyors, place the packages on pallets, and shrink wrap the full pallets. When production is operating, a pallet fills up every three or four minutes. The palletizers use forklifts to move the full pallets through the tunnel, open a door, go into the warehouse, and drop the pallets

in any free space to the left of the entrance to the tunnel. If there is sufficient open space, a palletizer need not to go more than 10 or 20 feet into the warehouse and would spend no longer than a minute in the warehouse. There is one production swing worker, who fills in for palletizers when they take breaks.

There are two mix persons who gather ingredients, unload cream from the tanks, and mix in the powders and other ingredients to create the different flavors of ice cream. One of the mix persons is able to operate a forklift. There are four freezer operators who are responsible for operating the freezers that cool the 40 degree mix coming out of the tank down to 20 degrees. Five filler operators run the machines that package the ice cream.

One lead lab technician and one lab technician check the content and quality of the ice cream. One production CIP cleaner cleans the tanks, vats, processing equipment, and freezers. One environmental worker cleans areas in both the production building and warehouse, and may also direct other production or warehouse employees who are cleaning when their regular work is not available.

About 15 of the 22 production workers, including the operators on the production line, wear sanitary white pants and shirts. The palletizers wear freezer suits. The receivers may wear jackets, overalls, or freezer suits depending on where they are working.

Production runs from 6:00 a.m. to 5:30 p.m., Monday through Friday. The mix persons come in at 10:00 or 11:00 p.m., Sunday through Thursday. There is one clean-up person who comes in about noon and another who comes in at 2:00 a.m. The receiver comes in at different times based upon when deliveries are scheduled. Some of the employees in production work four 10-hour days.

Some weeks the production line will run for only four days. Other weeks it may run for six days. The line is also shut down for two weeks over Christmas and New Year's Day. By contrast, the warehouse does not shut down. About half of the production employees take vacations during these weeks, while the remaining production employees perform maintenance and cleaning work. Production employees also do fill-in work, such as cleaning, whenever the line is not running. Other than the environmental person who may clean in the warehouse during the day, there is no evidence that production employees ever do cleaning or other fill-in work in the warehouse.

Employee Classifications Within the Warehouse Department

There are 34 employees in the warehouse department. One is a receiver. He uses a forklift and takes the ice cream that was left inside the freezer by the palletizers to the individual pallet positions in the warehouse. Product from other ice cream manufacturers is also received at the loading dock and stored in the warehouse for later distribution.

There is 1 lead order selector and 29 order selectors. The computer system prints off pick sheets, which are given to order selectors by supervisors. The order selectors pick product as listed and use palletizers and hand jacks to bring it to the dock. The one checker checks the loads. The checker and order selectors then load the product onto the trucks. The one leadman may also assist in loading or unloading of trucks, but he generally completes paperwork. There is one switcher who moves company trucks to and from the warehouse docks. He also makes sure that the trucks and trailers are operational and that the refrigeration units on the trailers are turned on.

All of the warehouse employees wear freezer suits. Seven of the 34 warehouse employees start work at 3:00 pm and 18 start work at 6:00 p.m., Sunday through Thursday. They pick orders and load trucks in preparation for the next day's deliveries. They also may put away product made onsite. Nine of the warehouse employees work days on Monday through Friday. During the day, these employees put away product they receive from the production department and other manufacturers. They also pick special delivery orders that for whatever reason were not picked the night before.

Once or twice per month, a delivery is made at the warehouse that has to be taken to the production building. Sometimes, if a truck arrives at the warehouse with items for production, production is busy with another truck, and the warehouse is slow, the warehouse employees will unload the truck. When the warehouse receives items for production, whether they are items to be taken to production or frozen ingredients to be put in the warehouse, a call is made to production for clarification on where it should be taken. Warehouse employees also do fill-in work, such as cleaning in the warehouse, when necessary.

Pay, Benefits, and Policies

All production and warehouse employees are treated the same for payroll purposes and have the same payday. They all receive the same base pay that starts for new hires at \$10.75 per hour and moves up by 6 gradual steps to the top level

of \$15.25 per hour after 3 years. There is a \$ 0.50 per hour premium for night shift work.

The Employer examined each job classification and made a list of the skill necessary for each job. Depending on the skill level, employees get a premium of \$1.00, \$2.00, or \$3.00 per hour. In the warehouse, order selectors and the checker receive no premiums; only two employees in the warehouse receive premiums, the lead order selector and leadman receive a \$1.00 per hour premium. The switcher has been with the Employer for a long time and his wages were beyond the scale at the time these calculations were made, so the skill level of his position was not calculated. He currently earns \$17.20 per hour. There is no evidence in the record about the premium for the receiver who works in the warehouse, but he currently earns \$17.60 per hour.⁴

Production employees generally have more skills and training than warehouse employees. It may take 2 weeks to train someone to run a packaging machine efficiently, but only 10 minutes to train an order selector. For production employees, palletizers and the environmental person receive no premium. The lead palletizer, receiver, and lab technician receive a \$1.00 per hour premium, the production CIP cleaner receives a \$2.00 per hour premium, and the lead lab technician, production swing worker, freezer operators, and mix persons receive a \$3.00 per hour premium.⁵ In summary, 36% of the production employees earn a \$3.00 per hour premium, 5% earn a \$2.00 premium, and 18% earn a \$1.00 premium. In contrast, no warehouse employee receive a \$3.00 or \$2.00 premium, and only 9% receive a \$1.00 premium.

Production and warehouse employees are eligible for the same insurance policies, health plans, and retirement plans. They are subject to the same attendance policies and discipline procedures, and are covered by the same employee handbook. Production employees receive two 15-minute breaks every shift. Employees working in the warehouse receive a 15-minute break every hour. Employees in the production building are also subject to a hygiene policy requiring them to maintain a high degree of personal cleanliness. All employees present on the production floor must wear hair nets and beard nets if needed.

⁴ There is a \$1.00 per hour premium listed for the skill level of the “Warehouse Receiver,” however, on the Employer’s list of employees, the receiver working in production is listed as “Warehouse Receiver” and the receiver working in the warehouse is listed as “AM Receiver.” There is no entry for “AM Receiver” on the premium pay structure list, but he is earning more than \$1.00 per hour over the base pay.

⁵ The premium pay structure list also designates “Production Set-up” and “Mix Room CIP Cleaner” as receiving a \$2.00 premium, but there is nothing in the record as to employees filling those positions.

Scheduling for vacations is conducted separately in each department and layoffs are also performed on a departmental basis. An employee laid off from one department is not allowed to bump an employee from a job in a different department. In fact, on one occasion a laid off warehouse employee was required to be rehired into the production department.

Interaction

Production and warehouse employees are generally given entry codes only to the locks to their own building. Without the code, entry into a building must be made through the tunnel. Some warehouse employees do go into the production building on a weekly basis as each employee is allowed to take home two, half gallons of ice cream per week and are only allowed to pick them up in the production building.

There were chickens cooked outside on a grill for all employees sometime last year and pizza was bought for all employees in January 2006. Safety and benefit meetings are occasionally held for all employees, and are scheduled throughout the day. Although meetings are not designated for attendance by department, because of the limited overlap of shifts between the two departments, in practice the meetings are predominately or exclusively attended by either production or warehouse employees depending upon when the meeting is scheduled.

There have been five permanent transfers between departments since the warehouse was purchased in 1999. Four order selectors transferred to the production department to become palletizers. One took the transfer after injuring herself and needing lighter duty, and another palletizer transferred to an order selector position in the warehouse due to a personality conflict he had with another palletizer. The last of the transfers occurred in June 2004.

There is only one instance in the record of an employee temporarily working in a different department. During two peak summer seasons over two years ago, due to a shortage of order selectors and temporary workers, a production employee came over on occasion and worked for two to four hours.

Analysis

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). The Board's

procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001).

For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. In determining community of interest, the Board has traditionally examined 12 factors as follows: (1) similarity in the scale and manner of determining the earnings; (2) similarity in employment benefits, hours of work, and other terms and conditions of employment; (3) similarity in the kind of work performed; (4) similarity in the qualifications, skills, and training of the employees; (5) frequency of contact or interchange among the employees; (6) geographic proximity; (7) continuity or integration of production processes; (8) common supervision and determination of labor-relations policy; (9) relationship to the administrative organization of the employer; (10) history of collective bargaining; (11) desires of the affected employees; (12) extent of union organization. See e.g., *Lundy Packing*, 68 F.3d 1577, 1580 (4th Cir. 1995); *Home Depot USA*, 331 NLRB 1289 (2000).

In this case, the production and warehouse employees share certain characteristics. They are all hourly employees, are treated the same for payroll purposes, have the same payday, receive the same benefits, and are covered by the same employee handbook.

The employees also have the same base pay structure, but most of the production employees receive significantly higher wages due to the premiums they receive for having more skills and training. Furthermore, while 9 of the 34 warehouse employees work the day shift, the same as production employees, the majority of warehouse employees work evenings and have little occasion to come in contact or interact with the production workers.

The employees share the same top management supervision, but direct supervision is clearly performed by the department managers and supervisors, who have offices in their individual buildings. While it is unclear how much independent authority these department managers and supervisors have to hire and fire, it is uncontested that they discipline, schedule, assign overtime, and perform job evaluations of only those employees working in their respective departments.

The production and warehouse employees work in different buildings, each locked and having a different entry code. Each building has its own time clock, lunchroom, vending machines, bulletin board, and bathroom, eliminating many of the sources of possible interaction between production and warehouse employees. There is scant evidence of actual interaction. There have been few transfers

between departments and only one worker known to have been assigned to assist temporarily in the other department. Furthermore, neither event has occurred for about two years.

The employees work under different conditions. Most production employees work in a necessarily sanitary environment and must adhere to strict hygiene requirements because of their food preparation duties. Warehouse employees work in subzero temperatures and receive hourly breaks. These different work conditions necessitate that the workers dress differently.

Operational integration is limited. Most of the production employees use their higher skill and training to perform distinctly different job functions from warehouse employees. While the product goes through a highly coordinated process of manufacturing and packaging, once completed, it is simply left in an open space inside the freezer for the warehouse to deal with at its own discretion. Also, while 100 percent of the product manufactured on site goes into the warehouse, it accounts for only one-third or less of the products which the warehouse stocks for distribution to retailers.

The facts of the present case are similar to those in *Windsor Industries*, 265 NLRB 1009 (1982), *decision supplemented by* 273 NLRB 1157 (1984). In that case, warehouse employees had different skills, performed different job functions, made less money, and worked in separate rooms from repair technicians. “The day to day contact between the technicians and warehouse employees is limited to ‘the routine movement of merchandise within the facility.’” *Id.* at 1020 (*quoting Montgomery Ward & Co.*, 230 NLRB 366 (1977)). The unit of warehouse employees, excluding the technicians, was found to be an appropriate unit for bargaining.

Also, in *Stanley M. Feil, Inc.*, 250 NLRB 1154 (1980), warehouse employees were found to have a community of interest distinct from the ladies’ sportswear factory workers and to be an appropriate bargaining unit. In that case, the warehouse was 100 to 150 yards from the factory, but “even if the question of separate locations were ignored,” the unit of warehouse workers would still have been found to be appropriate. *Id.* at 1171. While the warehouse and factory workers had the same top management, the warehouse employees had different day-to-day supervision, were less skilled, received lower wages, and did not work in the air-conditioned environment enjoyed by the factory workers. Although some factory workers had been transferred to or did temporary work in the warehouse, this was not enough to create a sufficient community of interest with the factory workers to make a bargaining unit of warehouse employees inappropriate as sought by the union.

The Employer's reliance upon *Airco, Inc.*, 273 NLRB 348 (1984), and related cases, for the proposition that there is a presumption that a plant-wide unit is appropriate, is misplaced. The Employer is not proposing a plant-wide unit and concedes the appropriateness of its already existing driver and maintenance units. It has only requested the inclusion of production workers into the petitioned-for unit of warehouse employees. As the foregoing discussion indicates, separate units of production and warehouse employees may be appropriate, and no labor organization seeks to represent both groups in any broader unit.

Accordingly, I find that the Employer's production employees do not share a community of interest with the petitioned-for unit sufficient to require their inclusion over the objection of the petitioning unions.

5. For the above reasons, and based on the record as a whole, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, including order selectors, checkers, switchers, receivers, lead men, and lead order selectors employed by the Employer at its facility located on Maple Street, Detroit, Michigan; but excluding production employees, maintenance employees, office clerical employees, drivers, managers, and guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 19th day of April 2006.

(SEAL)

"/s/[Stephen M. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO**

or

LOCAL 337, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

or

NEITHER

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all

parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **April 26, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **May 3, 2006**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.